UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES W. CAUGER, ET AL.,	)	Nos.
	)	1:16-cv-10358-DPW
Plaintiffs,	)	1:16-cv-12338-DPW
	)	1:16-cv-12339-DPW
	)	1:16-cv-12341-DPW
	)	1:16-cv-12342-DPW
vs.	)	1:16-cv-12343-DPW
	)	1:16-cv-12345-DPW
	)	1:16-cv-12352-DPW
	)	1:16-cv-12353-DPW
	)	1:16-cv-12354-DPW
TEXAS INSTRUMENTS, INC. AND	)	1:16-cv-12355-DPW
JOHN DOE,	)	1:16-cv-12356-DPW
	)	1:16-cv-12357-DPW
Defendants.	)	1:16-cv-12358-DPW
	)	1:16-cv-12359-DPW
	)	1:16-cv-12360-DPW
	)	1:16-cv-12361-DPW
	)	1:16-cv-12362-DPW
	)	1:16-cv-12363-DPW
	)	1:16-cv-12364-DPW
	)	1:16-cv-12365-DPW
	)	1:16-cv-12366-DPW
	)	1:16-cv-12367-DPW
	)	1:16-cv-12368-DPW
	)	1:16-cv-12369-DPW
	)	1:16-cv-12373-DPW

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

CASE MANAGEMENT CONFERENCE

John Joseph Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, MA 02210
Wednesday, May 9, 2018
3:13 p.m.

Brenda K. Hancock, RMR, CRR
Official Court Reporter
John Joseph Moakley United States Courthouse
One Courthouse Way
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APPEARANCES:

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On behalf of the Plaintiffs.

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On behalf of the Defendants.

(The following proceedings were held in open court before the Honorable Douglas P. Woodlock, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 1, Boston, Massachusetts, on Wednesday, May 9, 2018):

THE CLERK: In Re: Texas Instrument cases. If counsel could please come forward and identify yourselves for the record.

MR. PORRECA: Attorney Fiore Porreca for the plaintiffs.

MS. PERRY: Good afternoon, your Honor. Katherine Perry for Texas Instruments.

THE COURT: So, I have looked through the competing Proposed Scheduling Orders and so on. I guess we have been through Motion to Dismiss practice, so that is over. Now we are moving into the merits of the case. I think I have clarified what it is that survives Motion to Dismiss practice. It is the non-work-related allegations here.

Having done that, I look at the time period the parties are talking about. It is a long time to discover this case, and I do not quite understand why that is.

MS. PERRY: Well, currently, your Honor, there are 26 active complaints with 26 different disease allegations and very unique non-work-related exposure allegations potentially

in play in this case.

THE COURT: Right. So, the parties should be prepared to litigate the case. They could have been separately filed or jointly filed. I consolidated them to make sure that we got to them, or that I did not burden my colleagues, I guess, is a better way to say it.

MS. PERRY: Well, I guess I would just like to address your question of why, and I think one of the reasons why we had the one small area where we disagreed in trying to come to our scheduling order was an initial step after your order from March 31st of cleaning up the current complaint.

THE COURT: It does not have to be cleaned up. You file interrogatories. If you want to know something, you file interrogatories. But this was the subject of extensive briefing on these matters. I decided that, after some consideration of trying to draw the lines, it survives at this stage on the non-work-related exposure claims.

My expectation is that there is going to be summary judgment practice. I would like to get to that as promptly as possible, having in mind the parties' other schedules. On the other hand, if somebody takes on 26 cases, they had better be able to prosecute them. I would suspect that in promotional materials to potential clients Adler Pollock doesn't say, "We can't handle 26 cases."

MS. PERRY: No, your Honor, not at all.

THE COURT: So, now we are talking about what do we do to get the cases in a proper order? It strikes me that interrogatories that are directed to each of them to give you some information about their exposure and so on would move it along. And then we are talking about a series of individual depositions there that are, I will not say cookie-cutter, but perhaps not the most demanding kind of deposition practice that one encounters in one's legal career as a litigator, but perhaps there is something that could be passed on to more junior people to develop.

And then I guess there ought to be somebody out there who says, because I think they are going to have to, for the plaintiff an expert who can tie together exposure to something that can be chargeable to the defendant. I do not want to have a lot of time spent on Rule 11, but I assume that there is a good-faith basis for making these claims. But if there is, assuming there is, then it can be reached fairly quickly, I would think.

Now, is it realistic to believe that this can be disposed of on summary judgment practice in the best of all circumstances from the defendant's point of view without the experts? Defendant's point of view. Do you think you can move for summary judgment successfully without experts? I don't think you can.

MS. PERRY: I think, given the nature of the

non-work-related exposures that we may be dealing with as *de minimis* or non-existent, it's possible, once we actually take some depositions, that people don't have any exposures at all that are non-work-related. There may be a group within the 26, we have eight living plaintiffs, if I take eight depositions and they don't have any non-work-related exposures, yes, I can move for summary judgment without experts. But for any of the plaintiffs who have a witness who are able to substantiate any type of above *de minimis* or background levels of exposure, we would probably need plaintiffs' expert disclosures at a minimum.

THE COURT: Okay. So, what I guess I would say, because part of my responsibility, I think, is to minimize cost, and I do not want to see cost imposed on a party to reach an issue that could have been reached earlier -- it costs you money to get an expert and pay an expert -- that we might have two-tiered summary judgment practice, an initial summary judgment practice based on essentially non-exposure or evidence that there was not exposure outside of the work environment. I think, if that's the case, then that is probably a summary judgment case, isn't it, for them?

MR. PORRECA: I agree.

THE COURT: Okay. So, then the second ones are ones in which there is a genuine issue of material fact as to whether or not there was exposure outside of the workplace that

can generate a claim.

Then we go, I guess, to the expertise, and that is where the rubber meets the road. It may be that it has to be dealt with in a Daubert setting. I am not sure about that. But what I think I would like to do is, let's get the basic discovery, non-expert discovery done promptly, and that is really, "What is your exposure? Where do you think you had exposure?", that kind of thing, and that does not take an awful lot of time.

Now, we have medical authorizations September 28, 2018. Are people taking long vacations?

MR. PORRECA: I'm sorry, your Honor?

MS. PERRY: That is a date that we should be able to move up considerably.

THE COURT: Oh, I would think so. It was probably yesterday that it should have been done, but I will say that the medical authorization should be provided by the plaintiffs no later than May 31.

MR. PORRECA: By May 31?

THE COURT: May 31. I look at something like that and I think -- I don't know what I think -- but I think it is too slow, is what I ultimately think it is.

In terms of written discovery and deposition discovery, we have got depositions going out until June 28th, 2019. That is absurd. So, I am going to cut that back and,

without making any suggestions about how you want to allocate your time among written discovery and deposition discovery, I want all the discovery, fact discovery, completed by November 30, 2018. You decide how you want to do it. That means that nobody is filing written interrogatories on November 29th. You have got to get it all done, all of the discovery and depositions all done by November 30.

Then, at that point I will leave it to the defendant to take a position with respect to summary judgment. I think that what I would like is to receive notice as soon as the defendant decides whether or not they will be moving for summary judgment simply on the basis of the fact discovery in the case, and I will permit you to do so if you do it. But do not do it to educate me without any realistic possibility that you are going to be successful, because I am uneducable, and that will take too much time.

So, you have got November 30 to report whether or not there will be a first phase of summary judgment process that the defendant is going to pursue.

Then we turn to the question of expert reports, which right now are almost lost in the future. As far as I am concerned, as to those expert reports for persons who are not the subject of the summary judgment on the basis of fact discovery, we are going to push that up quite a bit, too. The expert reports that the plaintiff is going to have to provide

under Rule 26 will be by March 30, 2019. Let's be sure I have got this right. Yes, March 30, 2019, the defendant's expert reports to be provided by April 30, 2019, and the depositions to be completed by May 10th of 2019.

At that point I think the parties will be in a position to tell me how they want to proceed on dispositive motions or not. It may be that it is going to be a Daubert kind of question. My general view about that is that I can merge the two, that is, summary judgment and Daubert, the summary judgment being essentially -- or at least one aspect of it being a Daubert analysis of whether or not there is admissible evidence that would support the position of the plaintiff. So, from my perspective, that means that the remaining summary judgment motions should be filed by June 28, 2019.

So, that is the structure of it, a little bit more aggressive than the structure that is provided by the schedule that you have here.

Now, you have rebuttal expert reports, that sort of thing that I'm not sure are necessary. If you have got an expert, the expert ought to be able to speak to the question. If the expert wants to modify the expert report, they have to modify it before their deposition is taken so that someone can fully inquire, but this is the schedule for it.

MR. PORRECA: If I may, your Honor, so what date would

defendants have to file their answer? Will it be that August 31st date?

THE COURT: Well, faster than you provide your -- or maybe on the same schedule that you provide your authorization --

MR. PORRECA: Okay.

THE COURT: -- which is, as I have said, is really only -- what is it?

MS. PERRY: A little more than two weeks away.

THE COURT: No reason why you cannot. From my perspective, it survives the standards for a products liability kind of case or environmental case here. It may be that the plaintiff has no good grounds with respect to one or more of these people, and if that is the case there is a Rule 11 problem that will arise, but I am not taking that up yet. So, the plaintiff will look very carefully, and you will inquire very vigorously with respect to that, and we will get to it promptly.

But this schedule is designed to provide for the matter to be resolved on the merits, if cases do not get dismissed by the plaintiff here after more careful consideration of whether or not Rule 11 is being met. But I assume that there must have been someone that they talked to who said, "Oh, yeah, there has been exposure here to a chemical for which Texas Instruments is responsible." If there is not,

that will be a problem. But the orderly way of resolving it is the schedule that I have provided here, I think.

Now, is there anything else that we need to discuss?

MS. PERRY: No, your Honor.

MR. PORRECA: No, your Honor.

THE COURT: So, Ms. Beatty will send you a copy of the schedule, but you have got it, and you will get those authorizations promptly.

And you will get your answer promptly. Okay?

MS. PERRY: Thank you, your Honor.

THE COURT: All right. Thank you. We will be in recess.

MR. PORRECA: Thank you. Have a nice afternoon. Thank you.

THE CLERK: All rise.

(The Honorable Court exited the courtroom at 3:28 p.m.)

(WHEREUPON, the proceedings adjourned at 3:28 p.m.)

C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *Cauger, et al v Texas Instruments, et al.*, Nos. 1:16-cv-10358-DPW, et al.

Date: 6/4/18

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter